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C O N F I D E N T I A L SECTION 01 OF 02 KINSHASA 002001

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SUBJECT: AMNESTY LAW: QUESTION MAY NOT BE SETTLED YET

Classified By: PolCouns MSanderson, reasons 1.4 b/d.

11. (C) On November 29 the National Assembly passed the long-awaited amnesty law, but the central issue -- the fate of those accused of assassinating former president Laurent Kabila -- remains explosive and far from settled. Passage of the law itself triggered a spate of bad feelings, as the law passed on a slim three-vote margin following a walk-out by the PPRD and the Mai Mai delegates. This break with consensus -- the foundation of the transition -- in favor of majority voting could itself carry consequences for remaining legislation in Parliament, including the electoral law. Senior Presidential Advisor Augustin Katumba told PolCouns December 3 that National Assembly president Olivier Kamitatu had made a "deliberate choice" to force the law through, and would have to deal with the consequences.

12. (C) This law, a key piece of legislation identified in the transitional constitution as necessary to complete the transition, has always been divisive, posing as it does both a personal and political dilemma for President Kabila. Those close to the President say that he does not want to risk offending family members and the hard-liners among his political followers by appearing willing to forgive his father's killers. At the same time, he reportedly favored trying to advance national reconciliation, which was the intent of the law. When Kamitatu first believed that he had a workable law, over 18 months ago, he approached Kabila and in a series of private meetings, said that he had received Kabila's personal assurance that the bill could be presented for a vote and that the PPRD would support it. However, when Kamitatu brought the bill to the floor, the PPRD and Mai Mai delegates left the Assembly and, without MLC support, there were not enough votes to pass the law so it foundered.

13. (C) In the ensuing time the PPRD and RCD have sporadically searched for a compromise. It was the MLC which finally proposed a way forward, by inserting a new paragraph into the law defining political crimes, and specifically providing a conditional (vice complete) amnesty to the alleged assassins of the former president and giving them the opportunity to plead their case before the Supreme Court, abiding by the Court's decision. According to Katumba, the PPRD agreed to allow the bill to be voted based on the understanding that this language would be included. Instead, thanks to a few key changes in the definition of war crimes (changes which MLC VP Bemba reportedly believes will exempt him from prosecution for his actions during the war), the MLC withdrew its proposed compromise language and voted with the RCD and political opposition, providing the critical mass to pass the law on majority vote.

14. (C) The problem which remains now is a question of interpretation. The law no longer provides a specific definition of a political crime, despite fairly specific language defining war crimes. Moise Nyarangabu, head of the RCD/G component in the Assembly and one of his party's hard-liners, believes the RCD can and should use this imprecision to exonerate those of its members imprisoned or under sentence of death for their supposed involvement with the assassination. The PPRD vehemently insists that, since political crimes were not defined and killing a president is not a war crime, the law does not apply to this group. Furthermore, Katumba and others from the PPRD told PolCouns that if the RCD tries to have the Minister of Justice rescind the sentence regarding the assassins, the PPRD will challenge the law in the Supreme Court. Katumba also said that President Kabila will not sign the bill into law, despite the risk that the PPRD could then be accused of trying to block the transition. However, he added that as long as the RCD doesn't try to use the law to free those imprisoned, the law can be finalized "some time" before the end of the transition.

15. (C) Comment: Passing the bill has not put an end to the controversy and potential problems posed by the issue of amnesty. Among fallout from the bill's passage seems to be a rupture between National Assembly head Kamitatu and the PPRD (septel), and the threat (by the PPRD) of problems passing remaining pieces of key legislation, such as the elections law and the budget. But for President Kabila personally, the passage of the law -- over the strong and vocal objections of his party -- has drawn some of the sting from the issue. At

this point he can argue to both his family and his party that he did his best to oppose it, but that now it is time to move on. If he does so, resisting the urging of extremists that he either contest the law or refuse to sign it, it could be not only an important step in national reconciliation but one which redounds to his political credit. End comment.
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